

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 03-0156P**  
**Use Tax**  
**Calendar Years 1998, 1999, 2000, and 2001**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer is a national specialty retailer and cataloger of women's and children's apparel, accessories, and shoes. At audit, it was determined that the taxpayer failed to self assess and remit use tax for operating expense items such as form tabs, display hangers, hangers, masks, cleaning items, shipping records, envelopes, and other miscellaneous items.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that the tax due represents manual errors or incorrect interpretation of Indiana sales tax requirements with respect to selling versus non-selling expenses. Taxpayer states that records will indicate a consistent pattern of timely and accurate filings of its sales tax returns and requests that the penalty be waived.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer failed to self-assess and remit tax on 18.67%, 14.22%, 19.88%, and 03.05% (calendar years 1998, 1999, 2000, and 2001 respectively) of its untaxed taxable purchases and has not provided reasonable cause to allow the department to waive the penalty.

**FINDING**

Taxpayer's protest is denied.